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ANTONIO MOLINAR,

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

No. C-09-1486 MHP

10 Plaintiff(s),

**ORDER DISMISSING
COMPLAINT**

11 vs.

12 UNITED STATES OF AMERICA and the UNITED
STATES POSTAL SERVICE,

13 Defendant(s).

14 _____ /
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16 Plaintiff files this action seeking an order that the defendants deliver his mail in accordance
17 with his directions and that the defendant conduct an investigation into his misdirected mail.
18 Unfortunately, these are not claims over which the court can exercise jurisdiction even though they
19 involve the United States Postal Service.

20 A suit against the Postal Service is a suit against the United States which possesses sovereign
21 immunity absent a waiver of that immunity. The waiver must be specific and in the absence of such
22 a waiver suit is barred. The Federal Tort Claims Act grants such a waiver. See 28 U.S.C. §1346.
23 However, section 2680(b) of Title 28 explicitly exempts from the waiver “any claim arising out of
24 the loss, miscarriage, or negligent transmission of letters or postal matter.” Thus, this Circuit has
25 held that a claim against the Postal Service for misdirection or loss of mail is barred by sovereign
26 immunity and must be dismissed. Anderson v. United States Postal Service, 761 F.2d 527 (9th Cir.
27 1985).
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1 Furthermore, it is equally clear that the court has no power to compel the postal inspector to
2 perform the discretionary duty of conducting an investigation. See Roots v. J.S. Callahan, 475 F.2d
3 751 (5th Cir. 1973).

4 For the foregoing reasons this court is without jurisdiction to grant the relief sought and the
5 complaint in this action must be dismissed and is DISMISSED with prejudice.

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7 Date: April 15, 2009


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7 MARILYN HALL PATEL
8 Judge, United States District Court
9 Northern District of California
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